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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 5598

DATE COMPLAINT FILED November 1, 2004

DATE OF NOTIFICATION November 8, 2004

DATE ACTIVATED October 13, 2005

EXPIRATION OF SOL October 23, 2009

COMPLAINANT: Donald Dunn, Utah Democratic Party Chair

RESPONDENTS: John Swallow for Congress, Inc and Stanley R deWaal,
in his official capacity as treasurer
John Swallow
Utah Republican Party (Federal Account) and Mike
McCauley, in his official capacity as treasurer
Joseph A Cannon, Utah Republican Party Chairman
National Republican Congressional Committee and
Christopher J Ward, in his official capacity as treasurer

RELEVANT STATUTES

AND REGULATIONS: 2 U S C §§ 431(8)(A)(i), (B)(ix)
2 U S C §§ 431(9)(A)(i), (B)(viii)
2 U S C § 434(b)
2 U S C § 441a(a)(2)(A)
2 U S C § 441a(d)
2 U S C § 441d
11 CFR §§ 100 26, 100 27, 100 87, 100 147
11 CFR § 104 3(b)
11 CFR §§ 109 21, 109 37
11 CFR § 110 11
11 CFR § 116 1(c)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL/STATE AGENCIES CHECKED: Utah State Elections Office

I. INTRODUCTION

This case is about fourteen brochures criticizing Jim Matheson, incumbent Congressman from Utah's Second Congressional District, or supporting John Swallow (Matheson's opponent), that were distributed in that district by mail and by canvass shortly before the 2004 general election. The complaint, to which only two of the brochures were attached, alleges that they were excessive in-kind contributions from the Utah Republican Party ("the URP") and the National Republican Congressional Committee ("NRCC") to John Swallow and his campaign committee, John Swallow for Congress, Inc ("the Swallow Committee"). It bases this allegation on the fact that the brochures were produced by Arena Communications ("Arena"), a common vendor to the URP, the NRCC, and the Swallow Committee. It also alleges that the brochures did not contain adequate disclaimers.

Both the NRCC and the Swallow Committee deny having had anything to do with the brochures. The URP acknowledges responsibility for the brochures, but claims they cannot be excessive contributions because they qualified for the "volunteer materials exemption" of 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii). See also 11 C.F.R. §§ 100.87, 100.147. However, based on the available information, it appears that either someone other than the URP may have paid for one of the brochures or that one of Arena's invoices to the URP may not have been paid at all. Thus, it is unclear whether the URP in fact paid for all of the brochures at issue. Moreover, it is not clear that the degree of volunteer involvement in the distribution of the brochures was sufficient to qualify the brochures as "volunteer materials." If the brochures did not qualify as "volunteer

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1 materials," then coordination of them between the URP and the Swallow campaign could
2 have resulted in excessive contributions from the URP to John Swallow and the Swallow
3 Committee Accordingly, we recommend that the Commission find reason to believe that
4 the Utah Republican Party (Federal Account) and Mike McCauley, in his official capacity
5 as treasurer, violated 2 U S C §§ 441a(a)(2)(A) by making excessive contributions to
6 John Swallow and the Swallow Committee, 434(b) by failing to report all of its
7 contributions or coordinated party expenditures, and possibly a debt owed to Arena, in
8 connection with the brochures, and 441d by failing to include the appropriate disclaimer
9 on the brochures

10 With respect to the other respondents (the NRCC, John Swallow, the Swallow
11 Committee, and Joseph A Cannon, Chairman of the URP), we recommend that the
12 Commission take no action at this time

13 II. FACTUAL AND LEGAL ANALYSIS

14 A. The "Volunteer Materials" Exemption

15 The purpose of the volunteer materials exemption is "to encourage volunteers to
16 work for and with local and State political party organizations " H R Rep No 422, 96th
17 Cong , 1st Sess 9 (1979), reprinted in *FEC Legislative History of Federal Election*
18 *Campaign Act Amendments of 1979* at 193 (GPO 1983) Thus, for the exemption to
19 apply, the materials must be "distributed by volunteers and not by commercial or for-
20 profit organizations " 11 C F R §§ 100 87(d), 100 147(d)

21 Because volunteer materials are exempted from the definitions of both
22 "contribution" and "expenditure" (*see* 2 U S C §§ 431(8)(B)(ix) and (9)(B)(viii)), there is

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1 no limit on the amount a State party can spend on communications that qualify for the
2 exemption, and there is no limit on the degree to which such communications can be
3 coordinated with the beneficiary candidate's committee

4 While the Commission's regulations describe numerous factors that must be met
5 for a communication to qualify for the exemption (*see* 11 C F R §§ 100 87, 100 147),
6 only two are principally relevant to this matter First, the materials must be paid for by
7 the State or local party committee's Federal funds, and specifically may not be purchased
8 by a national party committee Second, the materials must be distributed by volunteers
9 and not by commercial or for-profit operations

10 **1. Who Paid for the Brochures?**

11 Controversy over the NRCC's role in the brochures apparently first surfaced in an
12 article published in *The Salt Lake Tribune* on October 24, 2004,¹ which reported "[URP
13 Chairman Joseph A] Cannon says the state office had acted as a 'conduit' for brochures
14 produced for the NRCC by Arena Communications' Peter Valcarce Arena workers
15 would drop off boxes of mailings at the party headquarters Republican volunteers would
16 stamp them And Arena would take the mailings to the post office for franking under the
17 party's permit " *See Rebecca Walsh, National, state levels of GOP blame the other for*
18 *attack ads*, *The Salt Lake Tribune*, Oct 24, 2004 (Compl Ex 3) Another article
19 reported that "[URP Executive Director Spencer] Jenkins said the NRCC and the Utah
20 Republican Party have worked jointly on 14 separate mailers that have gone out either

¹ The mailings were controversial in part because some of them harshly criticized Matheson for co-sponsoring legislation that had been supported by two Republican members of Utah's Congressional delegation Sen Orrin Hatch and Cong Chris Cannon

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1 supporting Swallow, criticizing Matheson or both " Bob Bernick, Jr , *GOP rips*
2 *Matheson for aiding a GOP bill*, Deseret Morning News, Oct 26, 2004 (Compl Ex 1
3 at 2) The NRCC, however, denied any involvement The NRCC's spokesman, Bo
4 Harmon, was quoted as saying "That was a Utah Republican Party piece They
5 researched it and printed it We had nothing to do with it " *Id*

6 In response to the complaint, the URP and Cannon appear to assert that while the
7 press accounts accurately characterized Cannon's initial statement to the press, Cannon's
8 statement was inaccurate Cannon, in an affidavit submitted with the response, stated
9 "After reviewing the details of the subject materials and mailings prepared and mailed in
10 connection therewith, I have determined that my spontaneous statements, made
11 without the benefit of investigation or review of the applicable facts, were not correct in
12 some particulars " (Joseph A Cannon Aff ¶ 7) Further, the URP and Cannon now
13 contend that the URP "paid entirely for the design, printing, and postage for the
14 Mailings, using federal dollars raised by the URP " (URP and Cannon Resp at 2)

15 In support of their assertion that the URP paid for the brochures with Federal
16 funds, the URP and Cannon submitted 14 invoices from Arena, three checks payable to
17 Arena that are written on the URP's "Federal Campaign Account," and supposedly
18 corresponding URP bank records (URP and Cannon Resp Ex's A - C) However, there
19 is a discrepancy The 14 Arena invoices total \$257,922 48, whereas the URP's three
20 checks total \$236,396 49 – a difference of \$21,525 99 The missing amount, \$21,525 99,
21 happens to be the precise amount of six of the 14 separate invoices from Arena to the
22 URP and thus appears to represent the cost of one particular mailer, but we do not know

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1 which one The bank records do not show any additional payment in the amount of
2 \$21,525 99 Further, not only have the URP and Cannon not supplemented their response
3 with any other cancelled checks in the amount of \$21,525 99, the URP's 2004 FEC
4 disclosure reports show only \$236,396 49 in disbursements to Arena, the same amount of
5 the three checks submitted by the URP and Cannon See URP's 2004 12-Day Pre-
6 Election and 30-Day Post-Election Reports Finally, the URP did not report any
7 payments, or debts owed, to Arena in its 2005 FEC disclosure reports Thus, the
8 available information does not support the URP and Cannon's claim that the URP paid
9 for all 14 brochures Further, if during our proposed investigation we discover that
10 someone other than the URP paid for one of the brochures, that brochure would not have
11 qualified for the volunteer materials exemption

12 The NRCC, in its response to the complaint ("NRCC Resp "), asserts that it did
13 not pay for or otherwise purchase the mailings (NRCC Resp at 2) In support of its
14 claim, the NRCC relies on the disclaimer printed on the brochures, which states "Paid
15 for by the Utah Republican Party," the URP's return address on the brochures, and the
16 postal permit indicium, which according to the NRCC "appears to be that of the Utah
17 Republican Party " *Id* The NRCC did not submit any additional information in support
18 of its response to the complaint

19 In light of the fact that we do not know who paid for one of the brochures, we
20 reviewed the NRCC's 2004 FEC disclosure reports to see if the NRCC made any
21 payments to Arena Although the NRCC made several disbursements to Arena during
22 2004 in connection with congressional races across the country, the NRCC did not report

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1 any payments to Arena in connection with John Swallow's race against Congressman
2 Matheson In addition, in an article published in the *Deseret Morning News*, Arena's
3 owner, Peter Valcarce, stated "none of my NRCC work is being done in Utah " Bob
4 Bernick, Jr , *GOP breaks campaign laws, Utah Demos say*, *Deseret Morning News*,
5 Oct 27, 2004 (Compl Ex 2 at 2)

6 We also considered whether the NRCC made any transfers to the URP during
7 2004 According to its FEC disclosure reports, the NRCC transferred \$177,500 to the
8 URP during 2004 Two of the transfers, \$50,000 on September 16, 2004 and \$27,500 on
9 October 21, 2004, were made during the time period in which Arena prepared the
10 brochures

11 In light of these circumstances, we analyzed the URP's FEC disclosure reports to
12 determine whether the URP had sufficient funds to pay Arena for the mailings without
13 using the \$77,500 the NRCC transferred to the URP in September and October of 2004
14 During the pre-election reporting period (October 1 – 13, 2004), the URP had
15 \$264,511 14 in beginning cash on hand plus receipts (excluding the NRCC's \$50,000
16 transfer on September 16, 2004) and made one payment to Arena in the amount of
17 \$54,058 87 During the post-election reporting period (October 14 – November 22,
18 2004), the URP had \$262,514 97 in beginning cash on hand plus receipts (excluding the
19 NRCC's \$27,500 transfer on October 21, 2004) and made payments to Arena totaling
20 \$182,337 62 Thus, it appears that the URP had sufficient Federal funds to pay all of

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Arena's invoices without using the funds transferred by the NRCC² For at least 13 of the 14 brochures, then, it does not appear that the brochures were "purchased by" the NRCC

However, it remains entirely unclear who paid for the particular brochure apparently represented by the \$21,525.99 difference between what Arena billed the URP and what the URP paid Arena, or even if anyone paid for that brochure. If the URP did not pay for the brochure, the brochure did not qualify for the volunteer materials exception. At any rate, the state of the record at the moment appears to be that \$21,525.99 was billed by Arena, never paid by the URP, and never reported as outstanding debt by the URP. A political committee's debts must be reported as outstanding until paid. 2 U.S.C. § 434(b)(8). Consequently, we recommend that the Commission find reason to believe that the Utah Republican Party (Federal Account) and Mike McCauley, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to report the debt. If further recommendations become necessary based on our investigation of the unreported debt, we will make them at that time.

2. Distribution by Volunteers

In previous Enforcement matters the Commission has applied the "no direct mail" and "volunteer distribution" requirements of its regulation by determining that mailings that were sorted for bulk mail treatment and physically delivered to a post office by volunteers qualified for the exemption even if they were printed and folded by a

² We also looked at the URP's non-federal account. Although the URP reported one disbursement to Arena from that account on October 7, 2004, in the amount of \$3,857.50, the disbursement was reported as made in connection with a mailing on behalf of a state candidate. See URP's 2004 Detailed Expenditures Report filed with the Utah State Elections Office, found at <https://ucra.state.ut.us/ucrmopc/public.html>

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1 commercial vendor, while materials that were "sent directly from the production house"
2 to the post office or "sent back to the vendor for mailing" did not See MUR 4471
3 (Montana State Democratic Central Committee) (qualified for the exemption), MUR
4 3218 (Blackwell for Congress) (qualified for the exemption), MUR 2377 (Republican
5 Party of Texas) (qualified for the exemption), MUR 3248 (New York Democratic Party)
6 (qualified for the exemption), MUR 4538 (Alabama Republican Party) (qualified for the
7 exemption), MUR 2994 (Wyoming State Democratic Central Committee) (did not qualify
8 for the exemption), MUR 2559 (Oregon Republican Party) (did not qualify for the
9 exemption) The Commission has, at the reason to believe phase, initiated investigations
10 where it could not be determined based on the information then available whether
11 materials qualified for the exemption or not See MUR 4754 (Republican Campaign
12 Committee of New Mexico) (respondent merely submitted copies of volunteer sign-in
13 sheets to support its claim that volunteers stamped, bundled, and delivered the mailers to
14 the post office), see also MUR 4851 (Michigan Republican State Committee) (respondent
15 did not provide any evidence of volunteer involvement) ³

16 In this instant matter, there are questions that bear investigating as to whether
17 those brochures that were mailed were physically delivered to the post office by
18 volunteers The URP and Cannon claim that volunteers processed, sorted and hand-
19 stamped the mail pieces and physically delivered them to the post office for mailing
20 (URP and Cannon Resp at 2) Indeed, Cannon has submitted an affidavit to that effect,

³ The investigations in those two matters indicated that the mailers qualified for the exemption, and the Commission ultimately took no further action

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1 and the response includes photographs of volunteers hand-stamping the brochures (URP
2 and Cannon Resp Ex D) However, there are two reasons to question the response's
3 representations First, Cannon originally told the press that after the volunteers stamped
4 the fliers, Arena took them to the post office Second, Arena's invoices to the URP
5 include charges for "mail handling" and "postage " If Arena had nothing to do with the
6 actual physical delivery of the brochures to the post office, it is unclear why it would have
7 charged the URP for either "mail handling" or "postage " Cannon claims in his affidavit
8 that his original statement to the press was incorrect, but nothing in the response
9 addresses the charges on Arena's invoices If those brochures that were mailed were
10 physically delivered to the post office by Arena, they would constitute "direct mail" and
11 would not be eligible for the volunteer materials exemption

12 Complainant alleges that the URP and the NRCC distributed by canvass some of
13 the brochures (Compl at 2) Complainant further alleges that the NRCC brought in
14 workers from outside of Utah to work on behalf of John Swallow and that those workers
15 were paid for their services by the URP and, "upon information and belief," the NRCC ⁴
16 *Id* The only basis for Complainant's allegation is an October 27, 2004 article in *The Salt*
17 *Lake Tribune*, which stated that Cannon reportedly "informed Republican operatives
18 imported by the NRCC from California to walk door – to – door on behalf of Swallow
19 that their expenses would not be reimbursed by the state party " Paul Rolly and JoAnn
20 Jacobsen-Wells, *Rolly & Wells Local GOP stands up for itself*, *The Salt Lake Tribune*,
21 Oct 27, 2004 (Compl Ex 4) This article does not say that the URP and the NRCC

⁴ Neither the NRCC nor the Swallow Committee responded to these allegations

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1 paid those workers for their services. To the contrary, the article indicates that the URP
2 was not going to reimburse those workers for their expenses. Thus, the available
3 information does not support Complainant's allegation that the URP and the NRCC made
4 excessive in-kind contributions to John Swallow in violation of 2 U.S.C. § 441a(a)(2)(A)
5 by paying workers to distribute some of the brochures.

6 **3. Conclusion**

7 In summary, there are questions that bear investigating as to whether any of the
8 brochures that were mailed qualify for the volunteer materials exemption, and the URP
9 further appears not to have continuously reported a debt of more than \$21,000 for one of
10 the fourteen brochures. If investigation of the debt reporting issue revealed that someone
11 else paid for one of the brochures, that brochure would not qualify for the volunteer
12 materials exemption.

13 If any of the brochures failed to qualify for the volunteer materials exemption, and
14 were coordinated with the Swallow Committee through Arena, then the brochures would
15 be considered coordinated communications, and the payments for them would constitute
16 either contributions to, or coordinated expenditures on behalf of, John Swallow. We now
17 turn to this issue.

18 **B. Potential Excessive Contributions Through Coordination**

19 Under the Act, the URP was permitted to contribute \$5,000 directly to John
20 Swallow and the Swallow Committee and to make coordinated party expenditures
21 totaling \$37,310 on behalf of John Swallow. See 2 U.S.C. §§ 441a(a)(2)(A), 441a(d).
22 According to the URP's FEC disclosure reports, the URP contributed \$1,000 directly to

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1 the Swallow Committee and made \$22,798 in coordinated party expenditures on behalf of
2 John Swallow in 2004. Thus, if the brochures do not qualify for the exemption and were
3 coordinated with the Swallow Committee, the additional coordinated expenditures,
4 \$236,396.49, would have exceeded the remaining limits available to the URP of \$4,000
5 in contributions and \$14,512 in coordinated expenditures.

6 A state party's public communication is coordinated with a candidate, a
7 candidate's authorized committee, or their agents if it meets a three prong test
8 (1) payment by a political party or its agent, (2) satisfaction of one of the content
9 standards set forth at 11 C.F.R. § 109.37(a)(2), and (3) satisfaction of one of the conduct
10 standards set forth in 11 C.F.R. § 109.21(d). See 11 C.F.R. § 109.37(a).⁵

11 In this matter, the first prong of the coordinated communication test is satisfied
12 because the URP paid for at least 13 of the brochures at issue. The second prong of this
13 test, the content standard, is also satisfied because each of the brochures attached to the
14 complaint is a "public communication" under 11 C.F.R. § 100.26⁶ and meets the content
15 criteria set forth in 11 C.F.R. § 109.37(a)(2)(iii)(A)-(C). First, both brochures refer to a
16 clearly identified candidate for Federal office (Matheson). (Compl. Ex's 5, 6)

⁵ Both the "content prong" and the "conduct prong" of 11 C.F.R. § 109.37 actually incorporate by reference certain provisions of the similar 11 C.F.R. § 109.21, relating to coordinated communications made by spenders other than party committees. Recently, in response to the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005), the Commission approved revisions to 11 C.F.R. § 109.21. The *Shays* litigation did not directly involve 11 C.F.R. § 109.37, and the revisions recently approved by the Commission to 11 C.F.R. § 109.21 were not retroactive. Thus, we apply here the law as it existed at the time of the activity in question. Moreover, on the facts of this case the new rules would not appear to change the result or the analysis even if they were applied retroactively.

⁶ "Public communication" means a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. 11 C.F.R. § 100.26

1 Second, the brochures were publicly distributed or otherwise disseminated 120
2 days or fewer before the November 2, 2004 general election (Compl at 1, Ex's 1-4)
3 Third, the brochures were directed to voters in Utah's 2nd Congressional District, the
4 jurisdiction in which Matheson and Swallow were candidates (Compl at 1, Ex's 1-3)
5 Therefore, a finding of reason to believe that the URP engaged in coordinated
6 communications through a common vendor depends, at this stage, on an analysis of the
7 "conduct" prong of the coordinated communication test

8 The conduct standard may be satisfied by affirmative acts that fall into six general
9 categories, among them, the use of a common vendor⁷ See 11 C F R § 109 21(d)(4) To
10 qualify as a "common vendor," a commercial vendor must satisfy three conditions First,
11 the person paying for the communication must have employed or contracted with a
12 commercial vendor to create, produce, or distribute the communication⁸ 11 C F R
13 § 109 21(d)(4)(i) This condition is satisfied because the URP contracted with Arena to
14 produce the brochures at issue and Arena, according to its website, "produces award
15 winning Campaign Advocacy Mail, Campaign Brochures, Newspaper Advertising, and
16 Billboard and Logo Design " See Arena's website,
17 <http://www.winningmail.com/main.html>

⁷ The other conduct standards are request or suggestion, material involvement, substantial discussion, former employee or independent contractor, and dissemination, distribution, or republication of campaign material 11 C F R § 109 21(d)(1)-(3), (5)-(6) The Explanation and Justification makes clear that the common vendor category does not presume coordination from the mere presence of a common vendor See 68 Fed Reg 436 (Jan 3, 2003)

⁸ The term "commercial vendor" means "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those kind of services " 11 C F R § 116 1(c)

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1 Second, Arena must have provided any of certain enumerated services to John
2 Swallow during the current election cycle 11 C F R § 109 21(d)(4)(ii) Those
3 enumerated services include "producing a public communication " See 11 C F R
4 § 109 21(d)(4)(ii)(F) As noted, the term "public communication" includes a mass
5 mailing, which is a mailing of more than 500 pieces of mail matter of an identical or
6 substantially similar nature within a 30-day period See 11 C F R §§ 100 26, 100 27

7 The Swallow Committee's FEC disclosure reports show that it made
8 disbursements, totaling \$150,563 26, to Arena during the period of January 5, 2004
9 through October 26, 2004 Arena's services included campaign brochures and campaign
10 printing

11 In June 2004 alone, Arena produced four brochures for the Swallow Committee at
12 a cost of \$46,293 83 That same month, the Swallow Committee purchased postage from
13 the U S Postmaster in the amount of \$1,184 Assuming that the Swallow Committee had
14 the same bulk mail rate (\$0 12 per piece of mail) as the URP, the amount of postage
15 purchased (\$1,184) would equate to approximately 9,866 (1,184 – 0 12) pieces mailed
16 Thus, because Arena provided one of the enumerated services (producing a public
17 communication) to the Swallow Committee, the second element of 11 C F R
18 § 109 21(d)(4) is satisfied

19 Finally, Arena must have used or conveyed to the URP (1) information about
20 John Swallow's campaign plans, projects, activities, or needs, which was material to the
21 creation, production, or distribution of the communication or (2) information used
22 previously by Arena in providing services to John Swallow or the Swallow Committee,

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1 which was material to the creation, production, or distribution of the communication

2 See 11 C F R § 109 21(d)(4)(iii)

3 While the URP and Cannon claim that the mailings were not coordinated with the
4 Swallow Committee, and the Swallow Committee claims that it did not have prior
5 knowledge of the mailings, we do not know whether Arena used information, or
6 conveyed information to the URP, regarding the Swallow Committee's plans, projects,
7 activities, or needs that was material to the creation, production, or distribution of the
8 mailings. Nor do we know whether information used previously by Arena in providing
9 services to the Swallow Committee was so used or conveyed. However, because the first
10 two elements of the common vendor test are met, there is reason to investigate whether
11 the use or exchange of information, as described in 11 C F R § 109 21(d)(4)(iii),
12 occurred in this matter.

13 Thus, if the URP's \$236,396 49 in expenditures for the brochures did not qualify
14 for the volunteer materials exemption, and the mailings were coordinated with the
15 Swallow Committee, the URP would have exceeded its combined contribution and
16 coordinated party expenditure limits by \$217,884 49, resulting in excessive contributions
17 of that amount. Accordingly, we recommend that the Commission find reason to believe
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1 that the Utah Republican Party (Federal Account) and Mike McCauley, in his official
2 capacity as treasurer, violated 2 U S C § 441a(a)(2)(A) by making excessive
3 contributions to John Swallow and the Swallow Committee⁹

4 The URP was required to report all of its contributions See 2 U S C § 434(b)(4)
5 The URP, however, reported only \$1,000 in contributions to the Swallow Committee
6 during 2004 Thus, because the URP disclosed \$236,396 49 as disbursements for the
7 brochures instead of as contributions to the Swallow Committee, we further recommend
8 that the Commission find reason to believe that the Utah Republican Party (Federal
9 Account) and Mike McCauley, in his official capacity as treasurer, violated 2 U S C
10 § 434(b) by failing to report all of its contributions to the Swallow Committee

11 While the URP's brochures might constitute contributions from the URP to John
12 Swallow and the Swallow Committee, even then they would not necessarily constitute
13 contributions received by John Swallow and the Swallow Committee An in-kind
14 contribution resulting from a coordinated communication through a common vendor is
15 not considered received or accepted by the clearly identified candidate or his authorized
16 committee unless there is conduct consistent with that described in 11 C F R
17 § 109 21(d)(1)-(3) See 11 C F R § 109 37(a)(3) At this time, there is insufficient
18 information to suggest that John Swallow or the Swallow Committee requested or
19 suggested the communication, became materially involved in the communication, or

⁹ If the proposed investigation reveals that the brochures, or any of them, were 1) not entitled to the volunteer materials exemption, but 2) also were not coordinated, a question would then arise as to whether any of the brochures were independent expenditures that should have been reported as such If those turn out to be the circumstances, we will make appropriate recommendations at that time

1 participated in substantial discussion about the communication. However, it is possible
2 that an investigation may indicate otherwise. Accordingly, we make no recommendation
3 at this time regarding John Swallow or the Swallow Committee.

4 **C. Appropriate Disclaimer**

5 Under the Act, any public communication made by a political committee must
6 display a disclaimer. See 2 U.S.C. § 441d, 11 C.F.R. § 110.11. Complainant alleges that
7 the brochures at issue did not contain the appropriate disclaimer. If the brochures qualify
8 for the volunteer materials exemption, the URP was required to include in the disclaimer
9 that it paid for the communication, but was not required to state whether the
10 communication was authorized by John Swallow, the Swallow Committee, or any agent
11 of John Swallow. See 11 C.F.R. § 110.11(e). Both brochures attached to the complaint
12 include disclaimers that state, "Paid for by the Utah Republican Party" and include the
13 URP's address. Thus, if the brochures at issue qualify as volunteer materials, the URP
14 used the appropriate disclaimer for these brochures.

15 If the brochures do not qualify as volunteer materials, the URP was required to
16 state in the disclaimer whether the communication was authorized by John Swallow, the
17 Swallow Committee, or any agent of John Swallow. See 11 C.F.R. §§ 110.11(b) and (d).
18 The disclaimer on the URP's brochures does not include that information.

19 Thus, because there is reason to investigate whether the URP's brochures qualify
20 for the volunteer materials exemption and, therefore, contained the appropriate
21 disclaimer, we recommend that the Commission find reason to believe that the Utah

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1 Republican Party (Federal Account) and Mike McCauley, in his official capacity as
2 treasurer, violated 2 U S C § 441d

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16 **IV. RECOMMENDATIONS**

17 1 Find reason to believe that the Utah Republican Party (Federal Account)
18 and Mike McCauley, in his official capacity as treasurer, violated 2 U S C
19 §§ 441a(a)(2)(A), 434(b), and 441d
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21

2 Take no action at this time with respect to the National Republican
Congressional Committee and Christopher J Ward, in his official capacity
as treasurer, Swallow for Congress, Inc and Stanley R deWaal, in his
official capacity as treasurer, John Swallow, and Joseph A Cannon.

3 Approve the attached Factual and Legal Analysis

4

5 Approve the appropriate letters

Lawrence H Norton
General Counsel

7/2/06
Date

BY

Lawrence L Calvert, Jr
Deputy Associate General Counsel
for Enforcement

Cynthia E Tompkins
Cynthia E Tompkins
Assistant General Counsel

Jack A. Gould
Jack A Gould
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